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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/628,831	07/28/2003	James Jannard	NOCODE2.005CP1	5897
20995	7590	02/11/2005	EXAMINER	
KNOBBE MARTENS OLSON & BEAR LLP			DANG, HUNG XUAN	
2040 MAIN STREET			ART UNIT	
FOURTEENTH FLOOR			PAPER NUMBER	
IRVINE, CA 92614			2873	

DATE MAILED: 02/11/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

AK

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/628,831	JANNARD ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Hung X Dang	2873	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 22 November 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) 1-13 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 14-25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

Applicant's election with traverse of group II (claims 14-25) in the reply filed on 11/22/2004 is acknowledged. The traversal is on the ground(s) that

"If the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to independent or distinct inventions."

This is not found persuasive because Group I, claims 1-6 drawn to wearable wireless audio interface comprises first electronic supported by the support and configured to receive the at least one received telecommunication signal and second electronic supported by the support and configured to transmit the at least one transmitted telecommunication signal and Group I, claims 7-13 drawn to an audio interface system comprises a source electronics electrically coupled with the receiver electronics configured to wirelessly transmit information to receiver electronics. While the device of group II, claims 14-25 do not comprise the listed above limitations. Thus the inventions between group I and group II are distinct. Further, the device of group I classified in class 381, subclass 381 and the device of group II classified in class 351, subclass 158. Thus these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

The requirement is still deemed proper and is therefore made FINAL.

### **Claims Rejection Under 35 USC - 102**

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 14-17 and 20-25 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by **Rickards** (6,012,812).

Rickards discloses industrial safety assembly comprises a support for supporting at least one lens in the path of a wearer's field of view' a first ear stem 21 attached to the support, for extending in a posterior direction along a first side of the wearer's head; a second ear stem 22 attached to the support, for extending in a posterior direction along a second side of the wearer's head; and at least one microphone 70 supported by at least one of the support, first ear stem 21, and second ear stem 22, the microphone 70 being arranged to face towards the head of a wearer of the eyeglass frame.

### **Claims Rejection Under 35 USC - 103**

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

invention was made to a person having ordinary skill in the art to which said subject matter pertains.

Patentability shall not be negated by the manner in which the invention was made.

Claims 18 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Rickards** (6,012,812) in view of **Vaudrey et al** (6,311,155).

Rickards discloses industrial safety assembly comprises a support for supporting at least one lens in the path of a wearer's field of view' a first ear stem 21 attached to the support, for extending in a posterior direction along a first side of the wearer's head; a second ear stem 22 attached to the support, for extending in a posterior direction along a second side of the wearer's head; and at least one microphone 70 supported by at least one of the support, first ear stem 21, and second ear stem 22, the microphone 70 being arranged to face towards the head of a wearer of the eyeglass frame.

Rickards does not disclose an MP3 storage device.

However, Vaudrey et al discloses a personal listening device (PLD) attached to the eyeglasses (see column 8, lines 40-46) wherein the personal listening device (PLD) is a MP3 playback devices (see column 23, lines 1-21.)

Because Rickards and the Vaudrey et al are both from the same field of endeavor, the purpose of storage the music as disclosed by Vaudrey et al would have been recognized as an art pertinent art of Rickards.

It would have been obvious, therefore, at the time the invention was made to a person having skill in the art to construct the eyeglasses frame, such as the one disclosed by Rickards, with MP3 playback device, such as disclosed by Vaudrey et al for the purpose of storing and listening the music.

Art Unit: 2873

3. Any inquiry concerning this communication should be directed to Examiner Dang at telephone number (571) 272-2326.

2/05

A handwritten signature in black ink, appearing to read 'Hung Dang', with a stylized flourish at the end.

HUNG DANG

PRIMARY EXAMINER

TC 2800